

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2750 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KHAMBHAT NAGRIK SAHAKARI BANK LTD & ORS

Versus

VINAYKUMAR BANSILAL SHAH

Appearance:

MR SR SHAH for Petitioners

None present for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/04/2000

ORAL JUDGEMENT

1. The orders passed by the Board of Nominees Court,
Anand in lavad suit below Exh.6 and the order of the
Gujarat State Cooperative Tribunal, Ahmedabad under which

the order of the Board of Nominees Court, Anand was confirmed, are challenged by the petitioners in this petition under Art.227 of the Constitution. This petition was placed on the board for preliminary hearing on 7/4/1998. The notice was issued to the respondent. Then, the interim relief granted in terms that the later part of the impugned order of the Board of Nominees Court, Anand was stayed.

2. The learned Counsel for the petitioners, Shri Shah, contended that the respondent in the lavad suit prayed for declaration that his nomination for the election of the office of the director has wrongly been rejected and under the impugned orders, the Board of Nominees Court, as well as the Tribunal, have granted final relief at the interlocutory stage which is not permissible. In support of his this contention, he has placed reliance on some of the decisions of the Apex Court. It has next been contended that looking to the nature of the case, it would have been justified and appropriate for the Board of Nominees Court to decide the suit finally. Lastly, it is submitted that once the election process started, the courts, normally, do not interdict. The process of election is to be allowed to be continued and the proper remedy for the petitioner would have been in such case to file the election petition. In this case, Shri Shah, Learned Counsel for the petitioners, urges that the election is to be held for four vacancies of Directors of the petitioner-bank. Because of this litigation, the whole of the election could not be proceeded meaning thereby, though the petitioner, at the most, could have been got elected to one vacancy, but three other persons will also suffer. Those three affected persons, that is, those were contesting the election for the Office of the Directors have not been impleaded as a party to the lavad suit. The orders passed both by the Board of Nominees and Tribunal, without hearing them, are against the basic principles of fair play and natural justice.

3. Nobody is present to oppose this petition on behalf of the respondent.

4. Having given my thoughtful consideration to the submissions made by the learned Counsel for the petitioners, I am satisfied that this petition deserves acceptance.

5. The election process for filling up four offices of directors on the Board of the petitioner-Bank has been started. The respondent has approached to the Board of

Nominees Court at the stage where his nomination has been rejected. From this fact, it does not remain in doubt that this lavad suit has been filed when the election process has been started. It is a settled law that once the election process has started, then, normally the courts which include the Board of Nominees Court may not make any interference therein. This process is to be permitted by the courts to be completed. This interdiction by the Board of Nominees in the election for the four offices of the directors is wholly unjustified, unwarranted and unreasonable. The respondent, if he felt that his nomination paper has illegally been rejected at that stage, has no right or locus standi to challenge that order of the Election Officer by filing the lavad suit in the Board of Nominees Court at Anand. He has to wait for the declaration of the result of the election. He has a remedy of filing an election petition. I find sufficient merits in the contention of the learned Counsel for the petitioners that at the stage the Board of Nominees Court at Anand as well as the Tribunal should not have made any interference in the matter.

6. Equally, the contention of the learned Counsel for the petitioners that by way of interim relief, the court cannot grant the final relief which is prayed for in the suit to the litigant, is full of merits and substance. It is a case where both the board of Nominees Court at Anand and the Tribunal has granted virtually final relief to the respondent at the interlocutory stage. If we go by the order of the Board of Nominees Court at Anand confirmed by the tribunal, it is a case where, in fact and substance, the court has decreed the suit of the respondent at this interlocutory stage. After this order, nothing remains to be decided in the suit. If we go by this principle, then certainly, it is a case where the Board of Nominees Court at Anand has granted final relief to the respondent at this interlocutory stage. This is not permissible to the Court and reference in this respect fruitful may have to the following decisions of the Apex Court :

(i) Bank of Maharashtra V/s. Rice Shipping and Trans. Comp. 1995(3) SCC 257.

(ii) Bharatbhushan Sonaji Kshsir Sagar V/s. Abdul K. Mohammad 1995 Supp.(2) SCC 593.

(iii) Shiv Shanker V/s. Board of Directors 1995 (2) Supp.SCC 726.

(iv) Comm./Sec. Govt. H & M Ed.Dept. V/s. Ashok K.

7. The contention of Shri Shah, learned Counsel for the petitioners that, at the most, the Court should have given a priority to the suit in the hearing rather than to grant final relief at this stage, is also full of merits and substance. Orders made both by the Board of Nominees Court at Anand and the Tribunal are wholly illegal and the same cannot be allowed to stand.

8. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Board of Nominees Court at Anand dated 22/09/1997, Annexure-K, and that of the Tribunal dated 29/12/1997, Annexure-M, are quashed and set aside. The application filed by the respondent, Exh.6, is dismissed. The rule is made absolute accordingly with no order as to costs. This decision will not come in the way of the respondent, if he so desires to file the election petition challenging the election of the four of the Directors after completion of the election thereof.

(S.K. KESHOTE, J.)

(Kamlesh)